APPENDIX

The pertinent portions of the opinion rendered on May 5, 1941, by the Court of Claims in *Chickasaw Nation* v. *United States and Choctaw Nation*, 94 C. Cls. 215, are as follows:

> JONES, *Judge*, delivered the opinion of the court:
>
> The Chickasaw Nation as plaintiff instituted this suit to recover the value of a one-fourth interest in certain lands in a triangular strip between two surveys of the eastern boundary line of a general tract of land that had been ceded to the Choctaw Nation in 1825.
>
> The plaintiff, the Chickasaw Nation, claims that by the Treaties of 1820 (7 Stat. 210), and 1825 (7 Stat. 234), the United States Government ceded a tract of land in Arkansas and Oklahoma to the Choctaw Nation; that in running the eastern boundary line of such tract an error was made; that the treaty called for a line running due south from a point one hundred paces east of Fort Smith, but that the surveyor bore to the west and did not cover in the actual survey all the lands ceded to the Choctaws; that in 1837 the plaintiff purchased an interest in all these lands; and that by the Act of Congress approved March 3, 1875, supra, the erroneous survey was confirmed and the disputed strip transferred to the public domain, thus depriving the plaintiff of its interest in the disputed strip.
>
> The defendant admits the error in the original survey, but claims that the lands were taken, not by the Act of March 3, 1875,

but by the original survey made in November and December 1825, pursuant to the Treaty of 1825, and that the lands therefore were taken from the Choctaw Nation alone before the Chickasaw Nation had purchased an interest in the tract.

Defendant filed a cross complaint against the Choctaw Nation pleading that if judgment is rendered against it in favor of the Chickasaw Nation, defendant be given in like amount over against the Choctaw Nation. Hereafter in this opinion the term defendant, unless otherwise specified, refers to the United States.

* * * * *

The defendant further urges that following the Net Proceeds case, which allotted to the Choctaw Nation $68,102.00 in payment for the land in question, the Chickasaw Nation contended for its part of this fund, and that subsequent to the payment of the judgment by the United States to the Choctaw Nation, the Chickasaw and Choctaw Nations by action of their respective legislative councils, duly approved by the President of the United States, agreed that the Chickasaw Nation should accept from the Choctaw Nation, and that the Choctaw Nation should pay to the Chickasaw Nation, an amount equal to one-fourth of the judgment of $68,102.00 less $1,021.53, which it was agreed was the Chickasaws' pro rata share of the cost incurred by the Choctaw Nation in prosecuting the suit.

The plaintiff urges that such agreement is not binding on the ground that the Chickasaw and Choctaw Nations, under the law prevailing at that time, had no right to make such a treaty or agreement. However, as the warrant was never issued and

the money was never paid to the Chickasaw Nation, we cannot see how the defendant is in a position to invoke this understanding as a settlement of its obligation. *Brown* v. *Spofford,* 95 U. S. 474, 477.

The defendant had the right to make the Chickasaw Nation a party to the Net Proceeds case. It did not see fit to do so. The fact that it settled with the Choctaw Nation did not in any sense constitute a settlement with the Chickasaw Nation. While the Chickasaw Nation had indicated its willingness to accept a one-fourth interest in the money which the Choctaw Nation had received in payment of the judgment, since it was not actually paid, it certainly did not relieve the defendant of the obligation to settle with the Chickasaw Nation for whatever rights it had in the premises.

The plaintiff contends that the value of the lands in question in 1875 was more than 50¢ per acre. However, after exhaustive study the Court of Claims in the Net Proceeds case, decided January 25, 1886, found that to be the value of the lands. This finding was not disturbed by the Supreme Court in passing upon the case. The lands in the public domain were sold and offered for sale in this particular area from $1.25 per acre to as low as 12½¢ per acre over a period of years.

The only additional evidence which plaintiff offered was some tax valuations and some sales of lands in this particular area during the period between 1870 and 1880. These records, however, are incomplete. They do not show the nature of the land listed, nor what improvements may have been located on any of the tracts at that time.

The valuation placed upon this property by the Court of Claims and approved by the Supreme Court was as near to a correct valuation as can be reasonably ascertained at this time. We, therefore, find that the value of the lands on March 3, 1875, was $68,102.00.

Since for a long period of time the basis of settlement of rights between the Choctaws and Chickasaws in respect to the lands was three-fourths to the Choctaws and one-fourth to the Chickasaws, and since the defendant had recognized this basis of division in numerous accountings, the plaintiff is entitled to recover one-fourth of the value of the lands. Under the previous decisions of the Supreme Court just compensation for lands taken from the Indians has been construed by the court to include interest. Ordinarily interest would be calculated from the date of the legal taking of the lands, March 3, 1875. *United States* v. *Creek Nation,* and *Shoshone Tribe* v. *United States, supra.*

However, the facts in this case are unusual. The plaintiff asserted no affirmative interest in this particular strip of land until after the decision in the Net Proceeds case in 1886, indeed until after the payment of the judgment in that case in 1888.

Later the Chickasaws began to claim a one-fourth interest in the proceeds of the judgment that had been rendered in favor of the Choctaws. Following considerable discussion they entered into a treaty or agreement with the Choctaws whereby they were to be paid $16,003.97 as their part, less expense of the suit, of the funds that had been recovered in that case. This treaty or agreement was approved by the

President of the United States on February 19, 1906.

In view of these and other facts of this case as well as the long period that has elapsed, we find that the payment of $17,025.50 (one-fourth of the sum of $68,102.00) with interest thereon from February 19, 1906, at the rate of 5 percent per annum constitutes just compensation for the interest in the lands taken from the Chickasaws. As to the date from which interest should be calculated, see *City of Ft. Worth* v. *McCamey*, 93 Fed. (2d) 964, 968, 969, and cases cited.

Even if it were found that the Chickasaw Nation had no affirmative title to the lands in question, it undoubtedly had purchased sufficient rights in the lands to be entitled to a one-fourth interest in the proceeds of all sales and leases of land and mineral rights. In the disposition of all such proceeds since 1837 it had been allotted one-fourth. By the agreement of 1905 it was to be paid by the Choctaws a sum equal to one-fourth of the amount paid to the Choctaws in the Net Proceeds case. This agreement was approved by the President February 19, 1906. The money of both tribes was on deposit in the Treasury of the United States.

Before defendant could claim exemption from liability to the Chickasaws for their interest in the proceeds of the lands which defendant had taken, it seems logical to hold that defendant would be obligated to see that their part of the moneys was actually paid to them.

Thus substantially the same result is reached whichever horn of the dilemma is chosen.

Is the defendant entitled to recover on its cross action against the Choctaw Indians?

At the time the judgment in the Net Proceeds case was collected, the Choctaws were fully aware of the interest of the Chickasaws. They had sold the Chickasaws a one-fourth interest in their lands. For many years in all proceeds arising from the disposition and leasing of these lands the Chickasaws had received one-fourth.

In accordance with this custom, practice, and interest, the Choctaws had promised by the Agreement and Treaty of 1905 to pay to the Chickasaws one-fourth of the net proceeds of that judgment. The agreement to pay this amount was approved by the President of the United States.

Accordingly, therefore, defendant is entitled to recover on its cross action against the Choctaw Nation the sum of $16,003.97, the amount which all parties to this suit agreed should be paid by the Choctaws to the Chickasaw Nation.

Since there was no stipulation for interest on this amount, since the claim is for a part of the moneys paid to the Choctaw Nation for the taking of lands in which the Chickasaws had an interest, and because of the peculiar relationship existing between the defendant and the Choctaw Nation, and because of the delay of the defendant in seeking a return of the money from the Choctaws, we do not think this obligation for the return of funds should bear interest prior to the date of entry of judgment herein. *United States* v. *Sanborn,* 135 U. S. 271, 281. This position is all the more conclusive because of the distinctions made by the Supreme Court in the case of *Goltra* v. *United States,* decided February 3, 1941 (312 U. S. 203).

We do not think the doctrine that money voluntarily paid cannot be recovered should be applied to the instant case, *Wisconsin Central Railroad Co.* v. *United States,* 164 U. S. 190, 211, 212.

Plaintiff is entitled to recover, but the determination of the amount of the recovery and the amount of offsets, if any (See Rule 39a), is reserved for further proceedings; and the defendant, the United States, is entitled to recover over against the Choctaw Nation the sum of $16,003.97.

It is so ordered.

MADDEN, *Judge;* WHITAKER, *Judge;* LITTLETON, *Judge;* and WHALEY, *Chief Justice,* concur.

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